

**REMARKS**

Applicants appreciate the time and effort accorded to the instant application by the Examiner. Claims 1-21 are currently pending. In the Office Action dated August 23, 2007, pending Claims 1-21 were rejected. Claims 1 and 18 are independent claims; the other claims are dependent claims.

On January 23, 2008, Applicants' representative conducted a telephone interview with the Examiner in which the pending claims and the art currently cited against the application were discussed. While there was no agreement reached regarding the claims and the art, it was agreed that Applicants would submit this amendment for the Examiner's consideration.

It should be noted that Applicants are not conceding in this application the claims amended herein are not patentable over the art cited by the Examiner, as the present claim amendments are only for facilitating expeditious prosecution. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Applicants wish to further note that the previously submitted comments addressing the art currently cited against the claims remains equally applicable here, and those remarks are therefore incorporated by reference as if set forth fully herein.

**Rejections under 35 USC 103(a)**

Claims 1-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,918,014 to Robinson (hereinafter "Robinson") in view of U.S. Patent No. 6,567,786 to Bibelnieks (hereinafter "Bibelnieks"). Reconsideration and withdrawal of these rejections is respectfully requested.

As previously explained, Robinson appears to be directed to determining a visitor's community and determining which ads to show based on characteristics of the visitor's community. *Robinson*, Abstract. Thus, Robinson teaches tracking a consumer's activities so all the information he generates can be tied together in the database, e.g., by means of cookies, such that a measure of similarity can be generated between individuals. *Id.* The individuals with the greatest similarity become a community and ads are presented to the visitor based on his community. *Id.* Although Robinson does deal with the situation where there is a new ad and thus no historical data is available for that ad (i.e., which community prefers that ad), the teachings of Robinson stand in stark contrast to the instantly claimed invention. Robinson teaches that a new ad "creates a chicken-or-egg situation; when an ad is new, there won't be any users who have already been exposed to the ad, so the system will be unable to find users who are similar to [another visitor]". *Id.*, Col. 19, lines 1-4. Robinson's teachings provide a solution, to wit "for each new ad, there will have to be a period when ACF [Automatic Collaborative Filtering] techniques are not the sole determinate of which ad is displayed; instead, such ads will be displayed either according to a fixed schedule or randomly" (in other words, Robinson's invention is not useful in this scenario). *Id.*, Col. 19, lines 6-9.

696.003

In the instantly claimed invention, there is not simply a presentation of promotions based upon a visitor's community. Rather, promotions are assigned randomly to a sample group of visitors in order to determine which promotion is the optimal promotion for maximizing an economic variable of interest. Claim 1. This stands in stark contrast to the test period of a new ad in Robinson in several ways. For example, all the promotions are randomly displayed to the sample of visitors in the instantly claimed invention's experimentation, irrespective of their community. Moreover, the purpose of the experimentation is not to group adds based on visitors' communities but rather to determine which ad will maximize an economic variable, e.g. for a merchant desiring increased customer satisfaction, not to determine which specific community prefers a given promotion. Thus both the literal interpretation and the basic idea of Robinson are starkly different from the instantly claimed invention.

In order to clarify that the instantly claimed invention contemplates actively experimenting with various promotions in order to determine the optimal promotion, which maximizes an economic variable of current interest to a merchant, the independent claims have been amended. Claim 1 now recites, *inter alia*,

(a) receiving configuration data from the Internet merchant, wherein such configuration data comprises: *a sample size* of visitors to the Internet website who are to participate in an experiment, and time-related information concerning the experiment; (b) randomly choosing visitors to the Internet website *to comprise a sample of visitors* to participate in the experiment according to the configuration data; running the experiment according to the configuration data *on the randomly chosen sample of visitors to produce sampling data, wherein the experiment comprises: presenting a plurality of varied promotions to different visitors within the sample according to the configuration data; and measuring the effectiveness of the plurality of varied promotions on the sample*; (d) dynamically determining an optimal promotion using real-time analysis of

the *sampling* data from the experiment, wherein the optimal promotion optimizes at least one economic variable selected from a group of economic variables; and (f) *thereafter* displaying the optimal promotion to the Internet merchant.

The remaining independent claim (18) contains similar language. These amendments are intended to clarify that, rather than passively presenting a new advertisement to visitors to an internet website in order to obtain information on which visitor communities prefer the ad, as taught in Robinson, the instantly claimed invention actively samples a fraction of visitors in order to determine the optimal promotion to be used to maximize an economic variable. Therefore, Applicants respectfully submit that the instantly claimed invention is clearly distinguishable from the teachings of Robinson.

Bibelnieks does not overcome the deficiencies of Robinson set forth above. As best understood, Bibelnieks optimizes marketing plans to customers over an extended period of time. There is no mention in Bibelnieks of running experiments on randomly chosen visitors to the website and then utilizing the data from those experiments in real-time analyses to determine an optional promotion. Further, there is no mention or teaching of optimizing promotions for a website. Rather, the promotional plans produced by Bibelnieks include all types of advertising, including online advertising, direct marketing, telephone marketing, and so on. Thus, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 USC 103(a).

Applicants wish to note that the claims, as amended, find full support in the originally filed specification. Specifically, the Examiner's attention is directed to the

specification, paragraph 0073-0093, particularly paragraph 0089 (discussing the sampling process) and paragraphs 0102-0108 (discussing a non-limiting specific example).

**Rejections under 35 USC 102(e)**

Claims 1-21 also stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,031,932 to Lipsky (hereinafter "Lipsky"). Reconsideration and withdrawal of these rejections is respectfully requested.

As best understood, Lipsky teaches a facility for adjusting an advertising campaign wherein a plurality of advertising alternatives are presented to the entire population of visitors, some visitors being presented a first alternative, other being presented another alternative. *Lipsky*, Abstract. The facility tracks the performance of the advertising campaigns with respect to one another (i.e., the advertising alternatives) and based upon the tracking, the facility attributes a performance score to each of the advertising alternatives and adjusts the allocations for the advertising alternatives accordingly. *Id.* The teachings of Lipsky thus stand in stark contrast to the instantly claimed invention.

Among many other differences, nowhere does Lipsky teach or suggest picking a fraction of visitors to comprise a random sample and experimenting on that random sample using various promotions to determine an optimal promotion for maximizing an economic variable (as pertains the entire population of current visitors to the website). Lipsky merely tracks the performance of *the current advertisements in use*, and based on the tracking, can regulate up or down the particular advertisements used. *Lipsky*,

Abstract. Nowhere does Lipsky teach or suggest that an optimal promotion can be found via testing various promotions not currently in use on a random sample of visitors. That one can notice, over time, that a particular ad is outperforming others and utilize that ad is not the sum total of the instantly claimed invention. Rather, in accordance with the present invention active experimentation is utilized to determine which, among a plurality of possible promotions, maximizes a particular economic variable of current interest to an internet merchant. Therefore, Applicants respectfully request that the rejections under 35 USC 102(e) be reconsidered and withdrawn.

While the above discussion as been directed to the independent claim, Applicants would like to now discuss specific dependent claims. These dependent claims are patentable for reasons in addition to those set out above with respect to the independent claims.

Claim 19 additionally requires "wherein in step (d) the optimized economic variable is market share". Claim 20 additionally requires "wherein in step (d) the optimized economic variable is customer satisfaction". Claim 21 additionally requires "wherein in step (d) the optimized economic variable is a resource selected from the group consisting essential of shipping resources and manufacturing resources". These claimed features (when combined with the remaining claim elements) are also not taught or suggested by Robinson, Bibelnicks, nor Lipsky.

As can be seen by the argument shown above, there a numerous distinctions between the claimed invention and the teaching of Robinson, Bibelnicks, nor Lipsky. (Not all of the distinctions, however, were discussed above.) Accordingly, Applicants

696.003

respectfully submit that Claims 1-21 are not obvious over the combination of Robinson in view of Bibelnieks, nor are Claims 1-21 anticipated by Lipsky.

### Conclusion

In view of the foregoing, it is respectfully submitted that independent Claims 1 and 18 fully distinguish over the applied art and are thus allowable. By virtue of dependence from Claim 1, it is thus also submitted that Claims 2-17 and 19-21 are also allowable at this juncture.

The "prior art made of record" has been reviewed. Applicants acknowledge that such prior art was not deemed by the Office to be sufficiently relevant as to have been applied against the claims of the instant application. To the extent that the Office may apply such prior art against the claims in the future, Applicants will be fully prepared to respond thereto.

In summary, it is respectfully submitted that the instant application, including Claims 1-21, is presently in condition for allowance. Notice to the effect is hereby earnestly solicited.

/

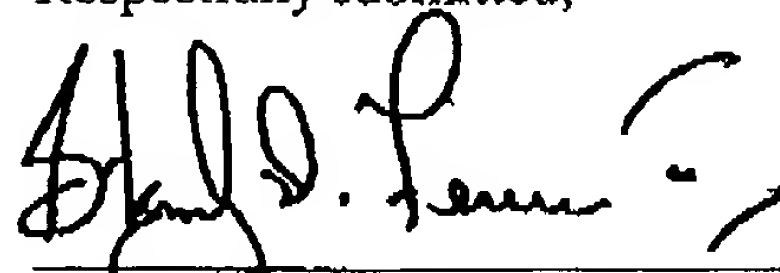
/

/

696.003

Should the claims not be in condition for immediate allowance, the courtesy of a telephone interview is requested prior to the issuance of a further Office Action.

Respectfully submitted,



Stanley D. Ference III  
Registration No. 33,879

**Customer No. 35195**  
**FERENCE & ASSOCIATES LLC**  
409 Broad Street  
Pittsburgh, Pennsylvania 15143  
(412) 741-8400  
(412) 741-9292 - Facsimile

Attorneys for Applicants